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RIGHT OF PEOPLES TO SELF-DETERMINATION

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 48/92 of 20 December 1993, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

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Annex

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

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I. INTRODUCTION

1. The General Assembly, in its resolution 48/92 of 20 December 1993, inter alia, condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as other forms of support to mercenaries, for the purpose of destabilizing and overthrowing Governments of African States and other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self determination (para. 2). The Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training are offences of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations (para. 3).

2. The General Assembly denounced any State that persists in, permits or tolerates the recruitment of mercenaries and provides facilities to them for launching armed aggression against other States (para. 4). It further urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that their territory and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation (para. 5).

3. The General Assembly called upon all States to extend humanitarian assistance to victims of situations resulting from the use of mercenaries, as well as from colonial or alien domination or foreign occupation (para. 6). It reaffirmed that to use channels of humanitarian and other assistance to finance, train and arm mercenaries is inadmissible (para. 7), and called upon all States that have not yet done so to consider taking early action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 8). The Assembly requested the Centre for Human Rights of the Secretariat to organize, within the framework of its existing resources, working meetings to analyse the philosophical, political and legal aspects of this question (para. 9); it took note with appreciation of the report of the Special Rapporteur (A/48/385, annex, para. 1) and requested him to report to the General Assembly at its forty-ninth session on the use of mercenaries, especially in view of the additional elements highlighted in his report (para. 10).

4. At its fiftieth session, the Commission on Human Rights, considered the thirteenth report of the Special Rapporteur (E/CN.4/1994/23) and adopted resolution 1994/7 on 18 February 1994 in which, inter alia, it reaffirmed that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States (para. 2) and urged all States to prevent mercenaries from using any part of their territories to destabilize or to threaten the territorial integrity of any sovereign State (para. 3) and to cooperate with the Special Rapporteur in the fulfilment of his mandate (para. 6). The Commission further requested all States that have not yet done

so to consider taking early action to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 4).

5. Taking note with appreciation of the report of the Special Rapporteur and the concern expressed therein at the continuation of the activities of mercenaries (para. 1), the Commission on Human Rights requested the Special Rapporteur to report to it at its fifty-first session on all further developments on the use of mercenaries, wherever that may occur (para. 5) and to make specific recommendations on effective measures to combat the activities of mercenaries (para. 7). It further requested the Secretary-General to provide the Special Rapporteur with all necessary assistance for the fulfilment of his mandate (para. 8).

6. Pursuant to the provisions of the above-mentioned resolution 48/92, the Special Rapporteur has the honour to submit to the General Assembly for consideration his fourteenth report on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

7. The Special Rapporteur travelled to Geneva on 30 January 1994 in order to submit his thirteenth report (E/CN.4/1994/23) to the Commission on Human Rights, which he introduced on 2 February 1994 at the 4th meeting of the fiftieth session. During his stay in Geneva, the Special Rapporteur held consultations with representatives of a number of States and met with members of non-governmental organizations. He also held coordination meetings with the Centre for Human Rights, in particular concerning the implementation of the provisions of paragraph 9 of General Assembly resolution 48/92. The Special Rapporteur regrets that, according to the information he received, the Centre for Human Rights has been unable to implement the provisions of that paragraph for lack of the necessary financial and budgetary resources. He believes, however, that a recommendation should be made to the General Assembly to emphasize the provisions of paragraph 9, in view of the fact that legal formulas and legal procedures are often resorted to in order to conceal the mercenary's legal identity and nationality, and cases of simultaneous use of dual or multiple nationality. A meeting between the Special Rapporteur and experts, specialists and parties interested in the topic which takes into account the categories of analysis used by the Special Rapporteur could significantly advance the process of further defining and establishing the scope of legal concepts on the granting of nationality and on cases of dual and multiple nationality and would thus contribute to the proposal of solutions designed to achieve a drastic reduction in mercenary activities.

8. The Special Rapporteur returned to Geneva on two occasions, from 30 May to 1 June 1994 and from 1 to 9 August 1994, in order to conduct a number of consultations, participate in the meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the

Commission on Human Rights which took place from 30 May to 1 June 1994, and in order to draft this report, respectively.

B. Correspondence

9. Pursuant to the provisions of General Assembly resolution 48/92 of 20 December 1993 and resolution 1994/7 of the Commission on Human Rights, adopted on 18 February 1994, the Special Rapporteur sent a communication dated 29 April 1994 to all States Members of the Organization, requesting the following information:

> "(a) Information relating to any activities of mercenaries which, in violation of the sovereignty and laws of your country, might have occurred or be occurring on your territory (recruitment, financing, training, assembly, transit or use of mercenaries);
>
> "(b) Information relating to any activities of mercenaries on the territory of another country which impair or may impair the sovereignty of your State and the exercise of the right of your people to self-determination;
>
> "(c) Information relating to any activities of mercenaries on the territory of another country which impair or may impair the sovereignty of other countries in your subregion, region or continent and the exercise of the right of other peoples to self-determination;
>
> "(d) Information on domestic legislation currently in force and international treaties to which your country is party relating to the prohibition of activities of mercenaries and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination;
>
> "(e) Your Government's position in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989.
>
> "(f) Suggestions which in your Government's opinion might be useful in refining the international approach to the subject of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination."

10. The Special Rapporteur has received replies from the Governments of Saudi Arabia (30 May 1994), Australia (1 July 1994), Austria (25 July 1994), Dominica (23 June 1994), Ethiopia (20 June 1994), Luxembourg (20 June 1994), Nepal (26 July 1994), the Niger (11 July 1994), Panama (5 July 1994), Sweden (20 July 1994), Tunisia (28 July 1994) and Uganda (1 June 1994).

11. The communication from the Government of Uganda replies to all paragraphs of the questionnaire. The Governments of Australia and Dominica have provided information to the Special Rapporteur on their specific domestic legislation designed to prevent mercenary activities. The Governments of Luxembourg, Nepal

and the Niger have indicated, on the other hand, that they have no specific legislation in their domestic legal orders, as no concrete situations have arisen that would necessitate the legal characterization of mercenarism. Lastly, the Governments of Austria, Panama and Tunisia refer to norms in their domestic legislation which do not specifically mention but can be applied to the activities of mercenaries.

12. The Special Rapporteur noted, in particular, the reply submitted by the Government of Tunisia to subparagraph (f) of the questionnaire which, in his view, is of sufficient interest to be worth reproducing:

"(...) Regarding suggestions which might be useful in refining the international approach to the subject of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

We should like to stress the following:

- Implementation of the 1963 Tokyo Convention, the 1971 Montreal Convention and the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague in 1970;

- Strengthening of international cooperation in the struggle against terrorism;

- The monitoring of arms sales;

- The identification of sources of financing for terrorist organizations;

- The imposition of firm economic sanctions against countries which sponsor terrorism;

- Incentives to States to deny passports and visas to terrorists and mercenaries;

- Total ban on the publication of announcements about the recruitment of mercenaries.

It should be noted, however, that there is no association or group in Tunisia which meets the criteria of mercenarism."

13. On 4 January 1994, the Government of India sent the following communication to the Special Rapporteur:

"Induction of alien mercenaries in Jammu and Kashmir, an integral part of India, has intensified in the recent past. Pakistan has escalated its programme of recruitment, training, financing and arming of alien mercenaries as part of its offensive in Jammu and Kashmir. The concerned authorities in India have reliably ascertained that in collusion with the Jamaat-E-Islami (JEI), Pakistan has recruited and inducted into India

mercenaries who had already been trained to fight along with the Afghan Mujahideen in Afghanistan.

"The mercenaries are also actively associated with local training of terrorists in Kashmir. The locations of mercenaries in dense forests and upper reaches of hills are being used as make-shift training camps. Some of these mercenaries have old association with terrorist groups in Kashmir going back to their training operations on Pak-Afghan border.

"The mercenaries are mostly operating with well-known terrorist groups like 'Hizb-ul-Mujahideen' (HuM), 'Al Barq' and 'Al Jehad Force'. In addition, 'Harkat-ul-Mujahideen' and 'Harakat-ul-Jehad-e-Islami' (HUJI) militant outfits have a large number of such mercenaries who are operating in various parts of the State.

"The profile of militancy in the Kashmir valley and several districts of the Jammu region has witnessed an unprecedented qualitative new dimension due to the presence of an estimated 500 battle-hardened, highly trained and well-armed mercenaries. The mercenaries apprehended in this area by the Government security forces since 1991, corroborate the fact of their presence. Around 30 foreign mercenaries engaged in terrorist operations have been arrested since 1990, and 91 have been killed while engaged in terrorist operations. In addition, incontrovertible documented evidence is available about the infiltration and presence of foreign mercenaries and the atrocities committed by them. A few mercenaries who were inducted in Jammu and Kashmir till the middle of 1992 were initially used as bodyguards of top militant leaders. They were also used by terrorist groups to arouse fundamentalist sentiments.

"The activities of mercenaries are in violation of the sovereignty and territorial integrity of my country. The intensity and ferocity of terrorist violence in Jammu and Kashmir in this period may be gauged from the fact that there were as many as 14,542 incidents of terrorist violence in Jammu and Kashmir in the last four years entailing the death of about 2,700 innocent civilians and countless acts of incessant destruction of government and private property. Political leaders, workers and their relatives have been eliminated to prevent all democratic political activity; government officials have been killed to silence the administration; members of the judiciary and the press intimidated to create a breakdown of the legal system and of independent journalism; intellectuals, educationists, journalists and community leaders abducted and killed to silence dissent. The systematic religion-based extremism by terrorist elements has resulted in the exodus of 250,000 members of other religious communities from Kashmir valley to other parts of India. Indeed as many as 50,000 Muslims have also been compelled to flee the valley to seek safety and succour in other parts of India.

"The atrocities perpetrated by the mercenaries have been wanton and indiscriminate. Even innocent women and children have not been spared. The pattern has been consistent: kidnap a woman and kill her after outraging her modesty. Or, rape and kill her in her own house in the presence of her own family members and then kill them all. Innumerable

human rights violations committed by mercenaries are widely corroborated by independent observers.

"The induction of mercenaries has resulted in an escalation in the intensity and firepower of terrorist attacks on security forces resulting in higher casualties and greater damage and destruction on public and private property. Several incidents of concentrated attacks on the army and Border Security Forces resulting in large scale casualties have been confirmed to have been planned and carried out by mercenaries."

14. On 2 February 1994, the Special Rapporteur notified the Government of the Islamic Republic of Pakistan of the complaints formulated by the Government of India concerning mercenary activities in Jammu and Kashmir and requested it to submit any comments or observations it deemed appropriate. On 3 February 1994, a letter was sent to the Permanent Mission of India to the United Nations Office at Geneva, requesting the following additional information:

"(a) Indication, wherever possible, of the nationality of the persons described as 'foreign mercenaries';

"(b) Specific information on the State, groups of States or international or national organizations that might be behind the recruitment and use of mercenaries;

"(c) If no such connection exists, information on the possible existence of groups in Jammu and Kashmir that might have called for the use of mercenaries without resorting to a third power;

"(d) Information as to whether these mercenaries are acting in an individual capacity, as self-organized gangs or in conjunction with armed groups or regular forces and, in the latter case, an indication of the country to which these forces belong;

"(e) Information on the type of illegal activity they are conducting: training, attacks on the civilian population, abductions, sabotage of civilian facilities, torture, killings and any other activity affecting human rights;

"(f) Information on the financing of the mercenaries, with an indication of how much, by whom and under what conditions they are paid;

"(g) Status of detainees alleged to be mercenaries (30) and those accused of terrorist activities, with an indication of their name, number and nationality, whether they are still under arrest, and the status of any legal proceedings instituted against them. Similarly, in connection with another part of your communication, a description of the documentary evidence that it has been possible to collect on the presence in Jammu and Kashmir of foreign citizens who have been used as mercenaries."

15. In a note verbale of 13 July 1994, the Permanent Mission of Pakistan to the United Nations Office at Geneva sent the following reply to the communication of the Special Rapporteur:

"(a) Pakistan condemns the use of mercenaries for destabilizing Governments and fighting against the national liberation movements of peoples struggling for their right to self-determination;

"(b) It is inconceivable for Pakistan to allow any mercenary activity on its territory. Pakistan's condemnation of such acts has always been immediate and unequivocal. Since 1980, Pakistan has been tabling resolutions in the Third Committee of the General Assembly, condemning the use of mercenaries;

"(c) On the other hand, it is very unfortunate that in our neighbourhood mercenary activity has continued unabated over 46 years in the disputed territory of Jammu and Kashmir. In the recent years, the mercenary actions launched by the Indian Government have reached an unprecedented level;

"(d) In August 1947, Pakistan and India became independent States in accordance with a scheme of partition provided by the Indian Independence Act 1947. Under the partition plan all Muslim majority areas were to constitute Pakistan and all the Hindu majority areas were to go to India. Similar advice was given to the rulers of over 560 States of India. The State of Jammu and Kashmir, with a 77 per cent Muslim majority, (1941 census) thus should have acceded to Pakistan. The Maharaja of Kashmir, however, fraudulently acceded the State to India on 26 October against the wishes of the people of Kashmir. Renowned historian, Mr. Alastair Lamb, in his book 'Kashmir: A disputed Legacy, 1846-1990' has dealt at length with the subject of the accession of Kashmir to India. He has concluded that the instrument of accession was invalid and was manipulated by the Indian Government;

"(e) The Kashmir issue was brought to the Security Council by India on 1 January 1948. As a result, the United Nations Commission on India and Pakistan (UNCIP) was established through a Security Council resolution on 20 January 1948. The Security Council adopted another resolution on 21 April 1948, which provided for a plebiscite in Jammu and Kashmir for determining the future status of the State;

"(f) After undertaking a survey of the situation, the Commission adopted a resolution, on 13 August 1948, containing proposals for a cease-fire order, truce agreement, and a re-affirmation of the desire for a plebiscite in Kashmir. The Commission decided that it will appoint military observers to supervise the observance of the cease-fire order. The UNCIP resolution of 13 August 1948 was accepted by both India and Pakistan;

"(g) The UNCIP sent its final plebiscite recommendations on 11 December 1948, to India and Pakistan. Both the Governments accepted the UNCIP proposals and the recommendations of the Commission were subsequently adopted in UNCIP resolution 5 January 1949. The resolution, inter alia, provided:

"(i) That the question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of free and impartial plebiscite;

"(ii) That the Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator;

"(iii) That after implementation of Sections I and II of the Commission's resolution of 13 August 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite;

"(iv) For the repatriation of refugees to participate in the plebiscite;

"(v) For the restoration of political and human rights to ensure a democratic plebiscite;

"(vi) For demilitarization preparatory to the plebiscite;

"(vii) For UNCIP certification as to whether plebiscite would be free and impartial;

"(viii) That the Governments of India and Pakistan should further agree that a United Nations representative be appointed by the Secretary-General of the United Nations in agreement with the two Governments, to have the authority of interpreting the agreement reached between the parties and implementation of the plan of the reduction and re-distribution of armed forces. Furthermore, the United Nations representative should place his good offices at the disposal of Pakistan and India for reaching an enduring solution to the Kashmir question;

"(h) The Security Council adopted resolutions in 1951 and 1957, reaffirming the right to self-determination of the people of Kashmir. The Kashmir dispute remains on the agenda of the United Nations Security Council. India thus remains in illegal occupation of Jammu and Kashmir;

"(i) After years of repression by the Indian occupying forces, the people of Kashmir rose to demand their inherent right to self-determination in 1990. This movement has resulted from the continued refusal of the right to self-determination to Kashmiri people. The struggle of the Kashmiri people derives its legitimacy from their recognized and unfulfilled right to self-determination. This right was recognized in the United Nations Security Council resolutions. These resolutions are as valid today as they were 40 years ago. The fundamental principle of self-determination which the United Nations, Pakistan and India and the

entire international community have pledged to the Kashmiri people is not subject to prescription. The Kashmiri people have risen to secure this right to self-determination which they have been denied for decades;

"(j) Since 1990, Jammu and Kashmir has been subjected to repressive laws like the Disturbed Areas (J&K) Special Power Act which provides for arrests, interrogation and detention of civilians up to four years without recourse to courts. The Indian mercenary army over the past four years have slaughtered more than 40,000 innocent Kashmiris in cold blood. Thousands more have been maimed and crippled. Still thousands are languishing in concentration camps and inhuman torture cells. Hundreds of their leaders - intellectuals, religious scholars, doctors, engineers, etc. have been either slain or detained in jails;

"(k) The Indian Security Forces are involved in deliberate and systematic acts of repression against innocent Kashmiris. International human rights groups have catalogued graphic accounts of Indian brutalities in Kashmir. Unfortunately it is in the 'world's largest democracy' that the innocent men, women and children have been killed and mutilated with full impunity under Draconian laws. Large scale and brutal repression of the Kashmiri people to suppress their right to self-determination amounts to the worst form of mercenary activity;

"(l) Pakistan extends moral, political and diplomatic support to the Kashmiri people who are fighting for their right to self-determination. We do not extend them military support. In this context, we would like to request the Special Rapporteur on the question of the use of mercenaries to visit Jammu and Kashmir to verify this fact;

"(m) In April 1990, in response to Indian charges of interference, the Foreign Minister of Pakistan had proposed to his Indian counterpart, the placement of neutral observers on the Line of Control in Kashmir to monitor and investigate charges of interference. Pakistan has repeatedly offered this mechanism which India has repeatedly rejected thus exposing the propagandist nature of its allegations;

"(n) Pakistan is prepared to facilitate visits by foreign journalists, parliamentarians, observers and human rights organizations to the areas along the border and the Line of Control. Pakistan has extended invitations to media teams to send their representatives to Azad Kashmir and to Pakistan. Similar invitations have been sent to Amnesty International, Asia Watch, the International Federation of Human Rights and other human rights organizations;

"(o) Pakistan has already opened Kashmir for international observation through the United Nations Military Observer Group deployed in Azad Kashmir, while India has always refused to do so on its side of the Line of Control;

"(p) India has not only launched mercenary action in the disputed territory of Jammu and Kashmir, but has also been trying to destabilize Pakistan through the training and financing of mercenaries in the Pakistani

Province of Sindh. India has been systematically launching subversive and terrorist elements in Sindh. Bases were established between Rajisthan and Barmer to train the mercenaries;

"(q) Training of saboteurs: Indian authorities have established 36 camps (19 of these are in Rajisthan and Gujrat to cover Sindh) for training of saboteurs with the ultimate aim to launch them into Pakistan for subversion and terrorism. Such trainees are generally drawn from anti-Pakistani organizations/elements. Some of the details are as under:

"(i) Establishment 22. A special cell known as Establishment 22 with its headquarters at Bachiya Bagh (Kalsi) near Dehradun has been imparting terrorist training since 1986 for subversive/terrorist activities inside Pakistan;

"(ii) Old Fort Office. Another RAW office located at Jaipur in an old fort situated on Ajmer Road also imparts terrorist training;

"(iii) Number of incidents/casualties. During the last 7 years (up to May 1994), Indian sponsored/trained agents carried out 219 incidents of terrorism in Pakistan which resulted in the death of 462 persons and injuries to 1,744."

III. LOCATION OF MERCENARY ACTIVITIES

16. The United Nations is based on the principles of sovereign equality, political independence and territorial integrity of States, as well as on respect for the self-determination of peoples. In this context and throughout its development as an entity responsible for the preservation of international peace, the United Nations has proclaimed it a basic principle of international relations that States shall refrain from the threat or use of force, and has instead sought to promote friendship and cooperation among States. These purposes and principles have repeatedly come up against situations of armed conflict that have not only undermined peace in a given region but also seriously violated such fundamental rights as life, liberty, political integrity and security of persons and peoples. These armed conflicts, occurring throughout the second half of the twentieth century, have been the main concern of the organs of the United Nations.

17. One recurrent element of armed conflicts is the use of mercenaries who violate the principles of sovereign equality, political independence and territorial integrity of States and self-determination of peoples. Mercenary activity is intrinsically illegal and results in the violation of fundamental rights and the perpetration of acts of violence that are contrary to the constitutional order of States and also help to make the armed conflict more cruel and intense. Mercenaries are brought in specifically to increase the military capacity of one or all the parties involved in an armed conflict. Realizing the implications of the presence of mercenaries, the United Nations has typified mercenary activities as serious crimes of profound concern to all States. This concern is expressed in many resolutions of the organs of the United Nations and, principally, in the International Convention against the

Recruitment, Use, Financing and Training of Mercenaries. This Convention, adopted on 4 December 1989, is in the process of ratification and accession with a view to its entry into force. In Africa, the Convention on the Elimination of Mercenarism, adopted by the Organization of African Unity (OAU), is in force.

18. Notwithstanding these provisions, it is a regrettable fact that the incidence of illegal international activities involving mercenaries continues and has even increased. Mercenaries perpetrate acts of violence by which they jeopardize human lives, inflict material damage, undermine the economy and carry out attacks which, in more than one case, have had the effect of unleashing or aggravating conflicts, with catastrophic repercussions for the peoples concerned. In engaging in these contemptible practices, mercenaries are not motivated by altruism; the ideological pretexts they tend to invoke conceal their real motivation, namely money. Mercenary activity is paid activity; mercenaries attack and kill for profit in countries other than their own or in conflicts in which their own country has no part. It is clear from the background studied by the Special Rapporteur that the mercenary is recruited because he is an expert, a cold-blooded, dehumanized individual who has turned war into a profession that enables him to earn good money and live well. Mercenaries tend to adopt extremist, highly radical and intolerable ideologies which serve to justify criminal activities that are contrary to the most elementary rights of the human person and of the peoples that are the victims of such acts.

A. Armed conflicts and mercenary activities

19. Generally speaking, domestic or international armed conflicts and the existence of a supply of professional soldiers whose job situation is uncertain or does not meet their social, political or financial expectations are the factors which combine to give rise to an organized supply of private entities or public bodies which engage in an illicit activity, in that they recruit staff and transform them into mercenaries by assigning them to commit unconscionable acts. Such persons become mercenaries when they agree to become involved in an armed conflict in exchange for payment, not to mention the fact that they may tolerate acts of cruelty or looting which also bring them additional financial gain. Moreover, a mercenary may act even in cases where there is no armed conflict, lending his services for the perpetration of criminal acts on behalf of a particular Power or group interested in causing damage in another country without being identified as the party responsible. In some cases, the actual authorities of a State, or an opposition group or domestic resistance movement, may recruit mercenaries illegally to engage in actions prohibited by the laws in force, for instance, to form a paramilitary force or organize a death squad.

20. Within the above context, the mercenary, regardless of his nationality, generally offers his services or is available for contact. The organizations involved in recruiting such persons work with government agents or with groups that are parties to a conflict, a fact that makes it easier to establish a connection and evidence of criminal association between recruiter and recruit. In some cases, legal devices are used to conceal the nature of the assignment or to make the mercenary appear to be a national of the country in whose armed conflict he is involved. Although the use of such advice conceals the

mercenary's real status, the origin of the contractual relationship, the payment, the type of services agreed, the simultaneous use of other nationalities and passports, etc., serve as leads for establishing the true nationality of persons involved in an armed conflict in respect of whom there are well-founded suspicions that they are mercenaries.

21. The location of events related to mercenary activities outlined by the Special Rapporteur in his previous reports corroborates the view that the use of mercenaries usually occurs in relation to an international or domestic armed conflict, when one or all of the parties to the conflict have recourse to mercenaries to carry out their military strategy. Even though there is massive mercenary activity in various armed conflicts today because of the objective increase in the supply of this type of activity, the recent re-emergence of the mercenary occurred in armed conflicts arising in connection with a people's right to self-determination. From the 1960s onwards and in the context of the decolonization of Africa, the active presence of bands of mercenaries constituted a device by the colonial interests which wanted to remain in the region, thereby affecting the process of self-determination from which a new African State was emerging or giving rise to situations of destabilization and war, in which the mercenary ingredient was of fundamental importance in intensifying and internationalizing the armed conflict.

22. There are complex cases in which allegations of mercenary activities in domestic conflicts are reported by international press sources and specialized analysts, but are denied or met with a dogged silence when information is sought from official sources. The Special Rapporteur wishes to draw attention to this objective difficulty, which prevents verification of the presence of mercenaries in domestic conflicts despite the internationally recorded evidence. Conflicts in which a mercenary component has been reported have included those in Afghanistan, Chad, Myanmar, Rwanda and the Sudan.

23. Generally speaking, mercenaries are former soldiers who compulsively identify themselves with the job of making war, pretend to be fanatical practitioners of an ideological option and are intrinsically intolerant or violent persons. However, the aggravating factor is that their participation is linked to the bloodier aspects of a conflict and to the most criminal violations of human rights. Moreover, financial considerations and the desire for illicit gain through looting which is associated with their participation may be decisive in extending the duration of the conflict. The mercenary's interest lies not in peace and reconciliation, but in war, since that is his business and his livelihood.

24. The activities referred to in this chapter may be engaged in by nationals in their own country; however, in this case they would not be mercenary activities as such, but acts prosecutable as offences under the relevant domestic legislation. They become mercenary activities when, for instance, foreign experts are recruited to illegally form the security force or personal guard of a public authority, or a death squad organized by a private individual or group. Foreign nationality is, in accordance with the international provisions on the question, an essential factor for classifying an offender as a mercenary. It should nevertheless be noted that drug traffickers, arms dealers, terrorists and mercenaries generally act as interconnected international gangs.

Thus, an irregular armed group engaging in terrorism may rapidly become a mercenary group by travelling to the territory of a neighbouring State in order to cover and give protection to a gang of drug traffickers, or to occupy a portion of foreign territory, removing it from the authority of the sovereign State.

B. Cooperation by States in preventing mercenary activities

25. In accordance with the resolutions establishing his mandate, the Special Rapporteur has studied in depth the problem which mercenary activities pose to the international community, and has gathered information which sheds light on the issue and is useful for formulating policies to prevent and combat mercenary activities.

26. The first observation that can be made on the basis of studies of the issue is that the presence of mercenaries is a recurrent activity that can arise anywhere in the world. While it is true that a number of African countries have suffered most from the criminal action of mercenaries in recent decades, this should not lead to the erroneous conclusion that there are mercenaries only in Africa. The facts show that any country can be the victim of mercenary action. Moreover, mercenaries come from a variety of countries; they are not organically linked to any State, although there are cases where temporary associations are established with intelligence agencies which use mercenaries, or the organizations that recruit and train them, to carry out acts of sabotage and hostility against a third State, so that responsibility for the attack cannot be attributed to the country which is really responsible for it.

27. A second conclusion is that there are situations where a legal vacuum or loophole permits the existence, in some countries, of legally registered associations which offer contracts freely to people who want to work as mercenaries, without the act of advertising or signing such a contract being regarded per se as illegal and prosecutable. In these cases, the legal loophole is that the law allows the market to operate freely and people to be recruited freely. The person who recruits a potential mercenary is simply an intermediary and is not committing an act that is illegal and criminal per se, because the mercenary will not necessarily receive money to commit a crime, the crime will not be committed in the place where the criminal action takes place, and the laws of the country do not classify mercenary activity in a separate category which automatically links the name of the mercenary and his signing of a contract with the commission of a punishable offence. This situation requires carefully investigating and monitoring market activities related to the recruitment of persons for unspecified services, which constitute a traffic culminating in objective damage in a territory other than the one in which the contract was made and jeopardizing the sovereignty of a third State, the life of persons, the economy and self-determination.

28. Third, mercenaries are generally people who have belonged to the regular armed forces of a country and as such have taken part in military conflicts. In other words, it is their job to make war and it is for this precise reason that their services are sought. From this standpoint, the unemployment they face when they are repatriated and retired from the regular forces and certain

personality changes they have undergone as a result of warfare may contribute to their becoming mercenaries. However, this dangerous extreme could be kept under control if States were to agree on a policy of prevention, exchange of information, follow-up and care of these kinds of people who have developed a tendency towards aggressive behaviour. It is possible to implement a policy of employment and psycho-social care for people with problems resulting from their participation in warfare, and it is also possible for the State to establish a legal framework for the actions of associations of former combatants to prevent them from going to extremes such as the glorification of war, the fostering of intolerance and the adoption of ideologies which cultivate violence and military interventionism.

29. A fourth aspect has to do with illicit activities such as drug trafficking, trafficking in people and arms, smuggling, terrorism, etc. Such acts occur in connection with armed conflicts or independently of them. In both cases, it has been found that gangs engaging in these activities require a military component to serve on security missions, to move merchandise, to fly aircraft and, if the need arises, to fight the regular forces that are protecting the sovereignty of the State affected by these illicit acts. States therefore have an interest in preventing bands of mercenaries from being formed or acting within their territory, in enacting laws that criminalize mercenarism and in taking legal action to suppress mercenary activity. Where mercenaries are former members of the armed forces or the police, this should be an aggravating circumstance and the penalties should be more severe.

30. Finally, with a view to refining the topic, there must be no attempt to justify mercenaries in the media nor any misconceptions regarding this type of human behaviour. A mercenary is not a hero nor is he the last romantic guerrilla, but a criminal whose actions are associated with the vilest crimes against life. The State and society must take notice of, prevent, punish and morally condemn mercenarism. At the same time, national legislation must be very harsh on State services, such as intelligence services, or authorities with repressive proclivities or private totalitarian-minded associations which, resorting to markets where mercenaries are available, recruit individuals for the purpose of establishing praetorian guards, death squads or operational groups devoted to political repression, assassination of political, religious or other adversaries. Unfortunately, these things happen in today's world and are related to the presence of foreign mercenaries.

IV. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

31. The African countries are those which have suffered most directly from the presence of mercenaries on their territory. Mercenary activities have been primarily aimed at preventing, disrupting or in some way modifying the exercise of the right of peoples to self-determination. Activities of this type have also been reported as having a political-military character, aimed at undermining the stability of constitutional Governments in the region.

32. In the course of the past 20 years, young African countries have suffered attacks on the self-determination of their peoples, their territorial integrity and the stability of their constitutional Governments; in these attacks mercenaries have been recruited specifically for this purpose and, have acted with extreme cruelty, to the detriment of fundamental rights of the peoples affected. Angola, Benin, Botswana, the Comoros, Lesotho, Mozambique, Namibia and Zimbabwe are countries which have suffered mercenary attacks which were intended to prevent self-determination, undermine the established Governments and subject them to the control of a regional Power. Racist attitudes and support for the apartheid system have been other significant characteristics of mercenary activities in these countries.

33. After many years of armed conflict, some of the countries most affected by armed violence have begun processes of political negotiation leading to the establishment and implementation of peace agreements, sponsored by the United Nations and the Organization of African Unity (OAU). The Peace Agreement of 4 October 1992 signed in Rome between President Joaquim Chissano and Afonso Dhlakama, chief of the Mozambican National Resistance Movement (RENAMO), ended the bloody 17-year conflict in Mozambique, establishing a cease-fire supervised by military observers of the United Nations Operation in Mozambique (ONUMOZ), disarmament, concentration and general demobilization of the opposing forces, the subsequent organization of presidential and legislative elections, currently scheduled for October 1994, and the creation of a new national army.

34. The Peace Agreement signed in Cotonou, Benin, on 25 July 1993 ended the bloody conflict which had been raging for over three and a half years in Liberia and caused over 100,000 fatalities. The Peace Agreement established a cease-fire, which entered into force on 1 August 1993, the concentration and subsequent disarmament and demobilization of the opposing forces, and the international supervision of these processes under the auspices of the Cease-Fire Verification Group (ECOMOG) and the United Nations Observer Mission in Liberia (UNOMIL), initiated on 22 September 1993. Presidential and legislative elections are to be held in 1994.

35. In addition, the Peace Agreement signed on 4 August 1993 in Arusha, United Republic of Tanzania, aimed at terminating the conflict between the then Government of Rwanda and the forces of the Rwandese Patriotic Front (FPR) did not work, and this led to the catastrophic internal confrontation of a genocidal character that broke out in April 1994.

36. In recent years, Africa has been affected by situations of political instability almost always accompanied by armed violence. The cases of Burundi, Cameroon, Chad, Djibouti, the Niger and Togo were mentioned in previous reports by the Special Rapporteur. To them he must add, with deep concern: the serious situation in Somalia, where the war between clans and sub-clans has led to the institutional overthrow of the State and necessitated humanitarian intervention by the United Nations; the Sudan, where civil war has profoundly affected the population's basic living conditions; and lastly, Zaire, where military and paramilitary groups directly subordinate to the President have engaged in looting, and committed brutal acts of repression and systematic violations of human rights. Lack of democracy, the perpetuation in power of leaders who gather all authority to themselves, exercising control through political

repression and the restriction or suppression of civil liberties, and militarization of the country is affecting a number of African States. In this context of political instability, their viability as States begins to be eroded; disorder, corruption, and anomy then combine to create situations of instability. In such circumstances it is not surprising that praetorian guards formed by mercenaries, sometimes in the service of foreign or neo-colonialist interests, should take over from the regular law-enforcement and security forces and systems of the State.

37. The conflicts mentioned above are affecting the human rights of the people and impeding development activities. The presence of mercenaries, in those cases where that is a factor, further increases these peoples' suffering. The international community should give thought to the background and habitual course of the conflicts in Africa and secure rapid and effective agreements guaranteeing the right of self-determination, fundamental freedoms, democracy and development to all peoples who, despite the attainment of independence of some years ago, are unable to accede to peace with justice and development, mainly because of the violence, foreign interests and armed conflicts.

B. Angola

38. During the first half of 1994, the situation in Angola has deteriorated steadily and become very serious as a result of the collapse of the Peace Accords of 31 May 1991. The Government controls the cities of Luanda, Lobito, Lubango, Cubal Sumbe, Benguela and Namibe, in other words, basically, it controls the coast and petroleum resources. However, Cuito and other towns of the interior are under the control of the National Union for the Total Independence of Angola (UNITA). Huambo has been taken by the rebel forces. Reports received refer specifically to two serious developments: the profusion of sophisticated weapons and the active presence of mercenaries, who are apparently again training troops and fighting in Angola.

39. UNITA's control of the eastern provinces has reportedly facilitated the arrival in Angola of mercenaries from Zaire to fight alongside the rebel forces; clandestine flights from Durban and Johannesburg to Mucusso and Jamba have also transported mercenaries, weapons and military equipment. General Georg Meiring, former Chief of the South African Defence Forces, confirmed on 11 September 1993 that members of the special elite forces and former members of the South African intelligence services were receiving offers of employment to fight in Angola as mercenaries. The candidates were offered one-year contracts and monthly salaries of US$ 10,000. General Meiring drew attention to the illegal nature of those contracts and warned that those responsible would be prosecuted.

40. UNITA, for its part, reports that the Government of Angola has recruited more than 3,000 mercenaries, primarily from South Africa and Namibia, some of whom are reported to be working as pilots in the government armed forces. Four mercenaries, recruited by the South African security company Executive Outcomes, were captured by members of UNITA on 27 July 1994 in the eastern province of Lunda. The Vice-President of South Africa, Mr. Thabo Mbeki, reported that his Government had urged the UNITA leaders not to carry out the death sentence which

the military chief Arlindo Chena Pena "Ben Ben" issued on the captured mercenaries.

41. The civil war in Angola has ruined the country's political and economic opportunities causing a serious deterioration in living conditions, which is threatening the whole of the Angolan population. The number of persons killed in 1993 and 1994 as a result of the military clashes, acts of sabotage, food shortages, infection and the lack of medicines and prompt medical attention in hospitals is estimated at over 200,000. Despite the sanctions against UNITA ordered by Security Council resolution 864 (1993), the level of fighting has not declined. Resolution 864, adopted unanimously on 15 September 1993 pursuant to Chapter VII of the Charter of the United Nations, establishes an embargo on arms, related matériel and petroleum for the UNITA forces; the embargo came into effect on 26 September 1993.

42. The purchase of weapons, sophisticated military training abroad and the presence of technicians and experts in military strategies are developments which are causing the war to spread and creating a situation where neither of the opposing parties has plans for an immediate end to the war through negotiation. Obviously, in this context, the presence of mercenaries, chiefly from South Africa, Namibia and Zaire, is one of the factors increasing the seriousness and ferocity of the conflict. UNITA is primarily responsible for having established links, since the onset of the civil war 19 years ago, with foreign mercenaries, whom it has used both for training its personnel and for military operations.

43. On 15 November 1993, peace negotiations began between the two parties to the conflict in Lusaka, Zambia, under the mediation of the United Nations through the representative of the Secretary-General, Mr. Alioune Blondin Beye. As a result of these negotiations, agreement was reached on a cease-fire on 3 December 1993. But it proved ephemeral for, despite the peace talks sponsored by the United Nations, the fighting intensified. The President of South Africa, Mr. Nelson Mandela, formulated a new peace initiative and on 7 July 1994, convened a meeting of senior officials from the countries of southern Africa. Nevertheless, in July 1994, the Government launched an offensive against the rebel-held areas in the central highlands and in the north, while UNITA bombed cities controlled by the Government. Accordingly, international food and health supplies are being seriously affected, endangering the lives of 2 million Angolans. Given that mercenaries are providing military training and engaging in sabotage, blockades and attacks, the situation would seem to call for a more active role in the peace negotiations by the United Nations and the countries of the subregion.

C. Rwanda

44. In describing and commenting on general aspects of mercenary activities in Africa, the Special Rapporteur referred, in his 1992, 1993 and 1994 reports to the General Assembly and the Commission on Human Rights, to the civil war that had affected the living conditions of the Rwandese population, exposing it to constant dangers. As is known, it is the position of the Special Rapporteur that political instability and military conflicts in a number of African

countries have encouraged one or all parties to a conflict, or third States, to speculate on the advantages to be gained by weakening the sovereignty of those States and to make use of mercenaries to whom they assign the cruellest and most criminal missions in those conflicts, thereby infringing the self-determination and the human rights of those affected by the conflict. Moreover, in his recent report to the Commission on Human Rights, the Special Rapporteur referred, in particular, to the situation in Rwanda, noting that the Peace Agreement signed on 4 August 1993 in Arusha, United Republic of Tanzania, was aimed at terminating the conflict between the Government of Rwanda and the rebel forces of the Rwandese Patriotic Front (FPR) (E/CN.4/1994/23).

45. The civil conflict in Rwanda has its origins in the repression carried out by the Hutus, the majority ethnic group that constitutes 80 per cent of the population, against the Tutsi ethnic group, since the country's independence. Thousands of Tutsis were massacred in 1959, 1963, 1966 and 1973; the massacres led to successive mass exoduses of members of that ethnic group, who sought refuge in Burundi, the United Republic of Tanzania, Zaire and, mainly, in Uganda. The country's Government and administration were in the hands of the Hutu ethnic group, principally the clans living in the regions of Gisenyi, Ruhengeri and Byumba. This is the background of the offensive launched on 1 October 1990 by FPR from Uganda, which unleashed a bitter civil war.

46. In response to the rebel offensive, President Habyarimana began a process of political openness and peace negotiations. In June 1991, the Constitution was reformed and a multi-party system established. In June 1992, peace talks began in Arusha, culminating in the Peace Agreement of 4 August 1993. The Agreement provided for the establishment of a broad-based transitional government that would include members of the Tutsi minority, the election of a transitional national assembly, the deployment of a United Nations peace-keeping force and the withdrawal of French military forces of the Detachment for the Protection of French Nationals and the Detachment for Military Assistance and Training that had been present in the country since 1990 and 1991, respectively. On 5 October 1993, the Security Council adopted resolution 872 (1993) by which it established the United Nations Assistance Mission for Rwanda (UNAMIR). However, neither the broad-based transitional Government nor the Transitional National Assembly had been formed when the Rwandese presidential aircraft was attacked in Kigali on 6 April 1994. The aircraft, which was carrying President Juvénal Habyarimana and the President of the Republic of Burundi, Mr. Cyprien Ntyamira, was attacked by ground-to-air missiles as it flew over Kigali.

47. According to information from the international press and commentaries and reports circulating among the Rwandese population and the humanitarian aid community, the attack on presidential aircraft was carefully prepared and well executed, having been carried out as the beginning of violent acts of extermination against Tutsis and moderate Hutus. It has also been reported that the attack was carried out by two white mercenaries, that is, foreigners whose nationality has not been clearly identified, who presumably had been specially contracted to carry out the operation. Other information indicates that the missile that brought down the presidential aircraft was launched by foreign mercenaries from the vicinity of the Kanombe military camp, the headquarters of the Presidential Guard.

48. As is known, the assassination of the President was followed by assassinations based on pre-established lists; among the victims were Mrs. Agathe Uwilingiyimana, the Prime Minister, Mr. Joseph Kavarunga, the President of the Supreme Court, several members of the Government and community leaders. In reality, the assassination of the President was the spark that gave rise to the violence, which led to an unprecedented number of murders of Tutsis and the Hutu opposition. It has been reported that members of the Rwandese Army, the Presidential Guard, the gendarmerie, the militias of the Hutu extremist party Coalition for the Defence of the Republic (CDR) and the former single party National Revolutionary Movement for Democracy and Development (MRND) were responsible for these massacres.

49. The forces of the Rwandese Patriotic Front (RPF) took up arms again and resumed a civil war that enabled the rebels to take Kigali in less than three months and establish an "interim" Government. However, the violence that occurred during that period claimed no fewer than 500,000 lives, to which must be added the hundreds of thousands of Hutus who fled when Kigali was taken, fearing reprisals by the Rwandese Patriotic Front (RPF) and the Tutsi population. The refugee Hutu population, situated mainly in Goma, Zaire, has been decimated by famine and disease such as cholera and dysentery.

50. As is known, in order to deal with these tragic events, UNAMIR has been strengthened and international solidarity has been mobilized - the same solidarity that began with Operation Turquoise carried out by the Government of France with the authorization of the United Nations. Ambassador José Ayala Lasso, the United Nations High Commissioner for Human Rights, visited Rwanda, after which the Commission on Human Rights held a special meeting and appointed a Special Rapporteur, Mr. Degni-Ségui, who has already carried out two missions and submitted his first report, which contains substantive information of great importance for determining the full scope of the tragedy of Rwanda (E/CN.4/1995/7).

51. The mandate of the Special Rapporteur is to help clarify whether or not mercenaries took part in the crime that cut short the life of the President of Rwanda and in the military, paramilitary and militia groups that committed the massacres. This must be fully proven, as must be the connections between all parties involved, both those who gave the orders and provided financing and those who took part in the events. The information obtained by the Special Rapporteur for Rwanda may be useful in beginning a reconstruction of the facts The information available to Governments providing assistance in the area and members of non-governmental organizations that are also providing humanitarian aid to the population, may also be useful. The Special Rapporteur has sent letters requesting information that may help establish the truth and prevent t crime from going unpunished.

D. South Africa

52. In his reports, the Special Rapporteur has repeatedly dealt with the racial violence of apartheid, the training of paramilitary forces and acts of aggression carried out by mercenaries from South Africa against countries and public figures of southern Africa. Today, after the elections held at the end

of April 1994, in which 27 million South Africans participated, and the election of Mr. Nelson Mandela as South Africa's first democratically elected president, it can be maintained that the process of dismantling apartheid, multiracial integration and the inclusion of South Africa in the community of the world's democratic nations, has been successfully completed. The international community's consistent political and economic support for the democratic Government of that country will help prevent regression, neutralize the white minority groups which have formed military organizations to defend their privileges and gain recognition of a state territory for the white population, and consolidate South African democracy.

53. In the light of these developments, the Special Rapporteur considers it necessary to point out that minority groups inclined towards violence, such as the Afrikaner People's Front and the Afrikaner Resistance Movement (AWB), among others, have armed themselves, relying on the assistance of mercenaries many of whom are linked to criminal attacks sponsored by the former apartheid regime. There is therefore a potential risk of violent resistance and criminal acts. In this regard, the Special Rapporteur believes that President Mandela's Government should prohibit, with all due severity, the presence of mercenaries in South Africa, adopt measures that punish the recruitment, financing and training of mercenaries and mercenary activities and, lastly, investigate crimes committed by mercenaries in order to ensure that such acts do not go unpunished.

V. PRESENCE OF MERCENARIES IN THE TERRITORY OF THE FORMER YUGOSLAVIA

54. The Special Rapporteur has been considering the presence of mercenaries in the conflicts that have been taking place in the territory of the former Yugoslavia since the preparation of his tenth report, submitted to the General Assembly at its forty-seventh session (A/47/412, annex). He has sent various communications to the States concerned and held interviews with their representatives before carrying out a comprehensive analysis and reaching definite conclusions that are not based on mere rumour, baseless allegations or statements constituting war propaganda.

55. The Special Rapporteur's thirteenth report, submitted to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/23), contains the replies provided by the Governments of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro); the Government of the Republic of Bosnia and Herzegovina has not yet responded. The report also contains summaries of interviews that the Special Rapporteur held at United Nations Headquarters with the Chargé d'affaires a.i. of the Permanent Mission of the Republic of Yugoslavia (Serbia and Montenegro) to the United Nations. In addition, it contains interviews held at the fiftieth session of the Commission on Human Rights in February 1994 and the exchange of communications on the possibility of a visit by the Special Rapporteur to the countries of the area.

56. Paragraphs 63 to 71 of the Special Rapporteur's report to the Commission on Human Rights at its fiftieth session, and paragraphs 23 to 34 of his report to the General Assembly in October 1993, provide detailed information on the work carried out with a view to verifying the many reports of mercenaries on all

fronts of the conflict that broke out in the territory of the former Yugoslavia. It should be noted that such reports have continued; the siege of Goražde, a Muslim centre in eastern Bosnia which is one of the security zones, by the Bosnian Serb military forces, and the confrontation in Bihač between Muslim secessionists led by Fikret Abdić, and the army of Bosnia and Herzegovina, which ended with the surrender of the rebels in August 1994, have served as a pretext for foreign mercenaries from diverse countries to become involved again in the conflict which, in its current stage, sets Bosnian Serbs, who have proclaimed their own Serbian Republic of Bosnia and, as a result of their military conquests, control 70 per cent of Bosnian territory, against the Republic of Bosnia and Herzegovina.

57. The situation prevailing at the time this report was being written (August 1994) is one in which the Bosnian Serbs are refusing to accept the proposal of the "Contact Group" consisting of the United States of America, the Russian Federation and the European Union, according to which, as a realistic peace settlement, 51 per cent of Bosnian territory would be given to the Croat-Muslim Federation and 49 per cent to the Bosnian Serbs, in addition to other provisions that would pave the way for a global peace settlement, in the context of which and through political negotiations, it would be possible to break the impasse and settle pending claims. Obviously, the peace agreements and their effective implementation are an indispensable condition for the withdrawal of the mercenaries who have taken part in the conflicts and whose presence has been reported, admitted, relativized and explained by some of the parties.

58. With a view to verifying claims of the presence of mercenaries in the conflicts in the territory of the former Yugoslavia, the Special Rapporteur has received formal invitations to visit Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro). These field visits would be carried out in the second half of September and the relevant report would be submitted to the next session of the Commission on Human Rights. However, in view of the importance of the matter, the Special Rapporteur will give an oral presentation to the Third Committee, a commentary on his visit, which he will have completed on the eve of the oral presentation of the present report to the Third Committee.

59. As immediate background for this visit, the latest substantive communications received from the Governments of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) are reproduced below; one communication is a reply refuting earlier allegations of the presence of mercenaries in Croatia, while the others contain additional information relating to previous allegations that mercenaries are participating in the conflict between Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro).

60. In its note verbale No. 661/1 of 5 July 1993, the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva submitted a report on mercenaries presumed to have taken part in the conflicts in Croatia in 1991 alongside the Croatian armed forces. With reference to the conflict in Bosnia and Herzegovina, it also details, inter alia, the participation of foreign mercenaries with the Croatian irregulars and with the government forces of Bosnia and Herzegovina and the

Muslim irregulars in the course of 1992. With regard to the same conflict in January 1993, the communication reports the presence of about 100 mercenaries from Denmark, Finland, Sweden and the United States of America in support of the Muslim 17th Brigade, stationed in Travnik. It says that, in February 1993, 20 British citizens arrived in Zagreb as mercenaries, hoping to join the Muslim forces. Lastly, it claims that a group of about 43 mujahidin from Saudi Arabia, led by a certain Abu Isa El Meki, committed brutal crimes and barbaric acts against the Serbian population in the territory of Bosnia and Herzegovina, and the municipality of Teslić. It also maintains that this group is responsible for taking part in the massacre of Serbian soldiers taken prisoner, among whom it mentions Blagoje Blagojević, Nenad Petrović and Branko Djurica, and sexual assault against Serbian women and children.

61. The Special Rapporteur brought the reports submitted by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the attention of the Governments of the Republic of Bosnia and Herzegovina and Croatia, requesting them to submit a comprehensive, detailed and documented reply concerning the allegations that had been received.

62. On 1 February 1994, the Vice Prime Minister and the Minister for Foreign Affairs of the Republic of Croatia, Mr. Mate Granić, sent the following communication to the Special Rapporteur in response to his request for information:

> "The initial statement of the annex under the heading 'Foreigners in Military and Paramilitary Forces in Croatia and Bosnia-Herzegovina', reading "Since the outset of the armed conflict in Yugoslavia, Croatia has recruited a considerable number of foreign mercenaries, instructors and various experts for its armed units", has not been corroborated further on in the text, nor any of the allegations (43 altogether) substantiated.
>
> "(First two allegations: On 28 September 1991, a group of 51 Filipinos, including two persons from Jamaica, arrived at Sarajevo airport.
>
> "On 7 October 1991, an aircraft coming from Rome landed at the airport in Tivat. The Philippine citizens wishing to joint the Croatian Army were aboard that flight. The aircraft was sent back to Rome.)
>
> "As for the first two allegations, they merely refer to the alleged intentions of some Philippine citizens. The Republic of Croatia has not data on them.
>
> "(Third allegation: Early in October 1991, over 100 Argentine citizens of Croatian origin, but also born Argentine, came to Croatia to sign up with Croatian armed forces.)
>
> "As for the third allegation, '100 Argentine citizens of Croatian origin and born Argentine signing up with Croatian armed forces', the Republic of Croatia has no information.
>
> "(Fourth allegation: In late October 1991, a group of Ukrainians contacted the Yugoslav Embassy in Moscow requesting a Yugoslav visa to travel to

Croatia and join irregulars there. The office of the firm Astra in Moscow is the headquarters for the recruitment and sending of mercenaries to Croatia.)

"The fourth allegation about 'a group of Ukrainians' is but an unfounded assertion by the Moscow Mission representing the Federal Republic of Yugoslavia (Serbia and Montenegro). Even if true, it could only mean that the Ukrainian citizens wished to join Serbian irregulars within the Republic of Croatia. Their intentions are best exemplified by the fact that they approached the Embassy of the Federal Republic of Yugoslavia. The Republic of Croatia has no information whatsoever. The allegation that the Moscow office of Astra Inc. has been 'the headquarters for the recruitment and sending of mercenaries to Croatia' is unsubstantiated as well.

"(Fifth allegation: Late in October 1991, the Yugoslav Embassy in London received a letter from a Stephen Schapke offering 250 former United States paratroopers ready to fight for any side in Yugoslavia.)

"The fifth allegation shows somebody's wishes and intentions which could in no way be linked to the Republic of Croatia. The Republic of Croatia has no knowledge of it.

"(Sixth allegation: At the beginning of November 1991, 20 mercenaries were recruited in the Netherlands and sent to Croatia to join its irregulars.)

"The sixth allegation about 20 mercenaries recruited in the Netherlands only implies their joining Serbian irregulars in the Republic of Croatia.

"(Seventh allegation: For several months during 1991, Colonel Gyla Attila of the Hungarian Army was attached to the Croatian National Guard (CNG) headquarters for Slavonia, Baranja and Western Srem. He was in charge of planning and undertaking combat activities of CNG units in this area.)

"As for the seventh allegation, in the second half of 1991, Mr. Gyla Attila, a Hungarian citizen, volunteered for the Croatian Army in the region of Slavonia. Nothing is known about his rank as a colonel, however. In any case, he did not act as a commanding officer of CNG units.

"(Eighth allegation: At the end of 1991, the Osijek operations zone of the Croatian Army had an international brigade established by Eduardo Roses Flores, the Zagreb-based correspondent of the Catalonian paper 'La Vanguardia'. The brigade was composed of former French Legion combatants and mercenaries from the wars in the Middle East and Latin America. It often operated on its own in the region of Eastern Slavonia and committed massacres against Serbian civilians in the villages of Divos, Ernestinovo, Tenjski Antunovac and others.)

"In respect of the eighth allegation about 'an international brigade', in fact it concerns the volunteers. There are no data to support the claim that they committed massacres. Their commanding officer, Mr. Eduardo Jorge Roses Flores, born in 1960, is a Croatian citizen.

"(Ninth allegation: The German citizen Kurt (Hans Wilhelm) Reisner, an active member of the Osijek International Brigade, and Colton Perry, an American citizen, Lieutenant and Commander of the Croatian Army's 131st reconnaissance squad stationed at Zupanja, were identified in the detention camp in Sremska Mitrovica.)

"As for the statement No. 9: Mr. Kurt Reisner, a German citizen, and Mr. Colton Perry, an American citizen, volunteered for some time with the 'international brigade'.

"(Allegation No. 10: A certain number of foreign nationals fought among Croatian National Guards in the battle of Vukovar. They were a German citizen, Harlan von Besinger, and a French citizen, Jean Nicolier.)

"As for statement No. 10, Mr. Jean Nicolier, another volunteer, acquired Croatian citizenship.

"(Allegation No. 11: A Swiss national and the Dutch citizen Gerrit Bronk were killed near Okucani in November 1991 and the British citizens Edward White and Christopher Hencock, both belonging to the International Brigade, got shot near Tenjski Antunovac.)

"With regard to the eleventh allegation, data are not available on the alleged killings of Mr. Christopher Hencock, Mr. Edward White and Mr. Gerrit Bronk. There is information, however, that Mr. Bronk left the Republic of Croatia following the Decree on Dismissal of Foreign Nationals from the Croatian Army, issued on 4 September 1992.

"(Allegation No. 12: The so-called First All-Croatian Combat Brigade stationed in Split and tasked with carrying out subversive sea operations has 20 Italian citizens in its ranks.)

"The Republic of Croatia has no knowledge of the allegations under No. 12.

"As for the remaining allegations, they do not apply to the participation of potential mercenaries in the armed forces of the Republic of Croatia. The Republic of Croatia has no record of the groups allegedly coming to its territory or entering it with a view to proceeding to the Republic of Bosnia and Herzegovina.

"Consequently, I reiterate on behalf of the Government of the Republic of Croatia that all the allegations about the engagement of foreign mercenaries in the Croatian Army, made by the Government of the so-called Federal Republic of Yugoslavia, are arbitrary, unfounded and misconstrued, hence strongly rejected.

"Moreover, may I point out that there have been negligible occurrences of private individuals (many of them Croatian by origin) who volunteered for Croatia when the aggression was waged against it and at the very beginning of the war (in 1991). Croatian authorities have duly reported their presence to the domestic and international public as early as the end of 1991. On 4 September 1992, an order was issued to dismiss foreign

nationals from the Croatian Army, in line with the general Croatian policy of reliance upon its own resources and manpower in the defence against the aggression.

"I avail myself of this opportunity to inform you that the Republic of Croatia has started the procedure for accession to the Convention prohibiting recruitment, deployment, financing and training of mercenaries, of 4 December 1989."

63. In response to a further request for information by the Special Rapporteur, transmitted on 29 April 1994, Mr. Pavle Bulatovic, Federal Minister of Defence of the Federal Republic of Yugoslavia (Serbia and Montenegro), transmitted the following communication to the Special Rapporteur, dated 12 July 1994:

"In reference to your letter addressed to the Federal Minister for Foreign Affairs, Mr. Vladislav Jovanovic, we would like to inform you about our latest data, together with those transmitted to you earlier on, about the use of mercenaries in combat on the territories of the former Socialist Federal Republic of Yugoslavia. Namely, according to the information received from the competent organ of the Federal Ministry for Defence - the Commission for the Exchange of Prisoners and Searching for Missing Persons - among the imprisoned members of the Croatian Army, who have participated as mercenaries in armed conflicts on the territory of the former Socialist Federal Republic of Yugoslavia, were found the following foreign citizens:

- Colton Glenn Perry. Born on 30 December 1967, in Portsmouth, Virginia, United States. By the decision of the then President of the Government of the Federal Republic of Yugoslavia, Milan Panic, through the representative of the Commission for the Exchange of Prisoners he has been turned over to the Chargé d'Affaires of the Embassy of the United States in Belgrade, on 8 August 1992;

- Pesa Nastazio Marin. Born on 3 February 1971, in New Jersey, United States. The same day as Colton, he has been turned over to the Chargé d'Affaires of the Embassy of the United States in Belgrade;

- Reisinger Hans Kurt. Born on 26 May 1963, in Seesen, Federal Republic of Germany. Lived in Hamburg. Through a representative of the Commission he has been turned over to the Chargé d'Affaires of the Embassy of the Federal Republic of Germany in Belgrade on 25 September 1992;

- Johannes Tilder. Born on 25 October 1963, in Enkhuizen, the Netherlands. Graduated at the Royal Military Academy, completed reconnaissance and parachutist training, in the French Foreign Legion. For a period of time he has been in service in a NATO base in the Federal Republic of Germany. He has been married to a woman from Croatia, which permitted him to obtain Croatian citizenship. He lived in Zagreb since 21 November 1991. He was

captured on 5 April 1994, in Teslingrad, Republic of Serbian Krajina, during the carrying out of a reconnoitring-intelligence operation, as a deputy commander of the reconnoitring-commando unit of the 9th Guard Brigade, consisting mostly of mercenaries, and well known for its crimes committed against Serbs in Lika;

"Tilder was killed during his escape from a Military Police vehicle on 10 May 1994, heading towards the county jail in Knin. He was buried on 13 May 1994, in the prison cemetery in Knin;

"During interrogation, Tilder admitted to having personally ordered and committed, together with members of his unit, numerous crimes against innocent civilians and wounded members of the Serbian Army of Krajina (slaughtering, massacres, rapes, etc.). Full information on this case is in the possession of competent organs of the Republic of Serbian Krajina;

"I would like to take this opportunity to inform you that the competent authorities of the Federal Republic of Yugoslavia are leading investigations on activities taking place in certain countries, especially in Turkey, Albania, and the Federal Republic of Germany where there exist special camps for training Albanians from Kosovo and Metohija, and Muslims from the Raska region in order to prepare them for carrying out commando and terroristic operations and armed revolts in the Federal Republic of Yugoslavia. You will be duly informed about the details of these investigations."

VI. PRESENCE OF MERCENARIES IN CONFLICTS OCCURRING IN STATES LOCATED IN THE TERRITORY OF THE FORMER UNION OF SOVIET SOCIALIST REPUBLICS (USSR)

A. Armenia-Azerbaijan (Nagorny Karabakh)

64. Three years after the dissolution of the Union of Soviet Socialist Republics (USSR), it has been objectively substantiated that the ethnic differences, diverse national identities and border configurations of each State have created difficulties and internal conflicts during the process of consolidation of each of the States that declared its independence. In reality, these tensions have occurred everywhere, but some have acquired serious characteristics since they have given rise to situations of war either because of the proclamation, in one part of the territory, of an independent republic or because of the desire to join with a neighbouring State, in most cases because a significant percentage of the population belongs to the same ethnic group as that of the bordering State. The Special Rapporteur has been involved with a number of these conflicts, by the fact of receiving reports of the participation of mercenaries in them.

65. One of the most visible cases has been that of the military confrontation between the independent States of Armenia and Azerbaijan over the disputed territory of Nagorny Karabakh, which is located in Azerbaijan but whose inhabitants are mostly Armenian. Not wishing to be part of the independent State of Azerbaijan, they almost immediately proclaimed a Republic of Nagorny

Karabakh on 2 September 1991, calling for the application of the Soviet law allowing an autonomous region to decide to remain part of the Union of Soviet Socialist Republics (USSR), if the Republic to which it belonged declared its independence from the Union. Azerbaijan did not accept that argument and took military measures to maintain its sovereignty over the enclave, while also applying an economic blockade against Armenia which was supporting the claims of Nagorny Karabakh. An armed conflict thus ensued and continues to this day; on the one hand it involves the resistance of the Armenian majority in the enclave of Nagorny Karabakh, but in actual fact it is a war between Azerbaijan and Armenia.

66. Throughout the armed conflict, which has resulted in more than 20,000 dead since 1988, the Azerbaijani forces have launched offensives on the Karabakh rebels and inflicted damage on such places as Mardakert, Haterk, Askeran and the Agdam region, while the joint Armenian-Karabakh forces have managed to penetrate and gain control over a twentieth of Azerbaijan's territory.

67. The peace talks having collapsed on 18 May 1994, the conflict has continued throughout this year. That month, the Azerbaijani forces resumed the shelling of Mardakert in north-eastern Nagorny Karabakh. The Azerbaijanis accused Armenia of launching a massive assault on Nakhichevan, a mountainous region near Armenian territory, and of shelling the village of Cyunnyut. The conflict has not moved any closer to a possible peace agreement, but rather towards a war of attrition that threatens to go on for several years. According to reports received by the Special Rapporteur, one of the disturbing elements in this war is the recruitment, financing and use of mercenaries.

68. In paragraph 76 of his report to the Commission on Human Rights (E/CN.4/1994/23), the Special Rapporteur indicated that he had brought these reports to the notice of the Azerbaijani Government in a letter dated 26 July 1993, and to the notice of the Armenian Government in a letter dated 28 July 1993. The paragraph refers to the following reports:

(a) On 26 January 1992, a French mercenary was killed during an Azerbaijani attack on the village of Karin-Tak, near Stepanakert;

(b) In February 1992, a foreign mercenary fighting with the Armenian self-defence forces was killed in the attack on the Azerbaijani town of Khojaly;

(c) From 12 to 14 June 1992, nine foreign mercenaries fighting in the Armenian forces were killed in battles around Askeran;

(d) On 1 July 1992, the commander of a battalion of the self-defence forces of Azerbaijan stated to the Tuyran News Agency that, in a battle in the Mardakert region, a foreign mercenary who had sided with the Armenian National Army was killed;

(e) On 1 June 1993, six former Russian soldiers were captured in action, after reportedly carrying out subversive operations in Nagorny Karabakh. According to the information received, they were recruited by Russian officers to train Armenian units in Nagorny Karabakh after their Russian units in Armenia

had been dissolved and they had been discharged. They were reportedly convicted as mercenaries;

(f) It is reported that foreign mercenaries working for payment for the Nagorny Karabakh and the Armenian forces, but also for the Azerbaijani forces, have shelled houses, hospitals and churches, looted and burned houses, and intentionally terrorized and forced the civilian population out of villages, by killing and wounding civilians, including women and children, and by taking civilian hostages;

(g) Foreign mercenaries of Slav and Turkish origin are reportedly performing highly specialized military functions in the Azerbaijani Army.

69. Up to the date of the present report (the first fortnight of August 1994), no response has been received from the Government of Armenia. For its part, the Ministry of Foreign Affairs of Azerbaijan has sent a detailed communication describing the presence of Russian mercenaries in the Armenian forces, based on data provided by the Ministries of Defence, National Security, the Interior and by the Supreme Court of Azerbaijan. According to the communication, the presence of mercenaries is a certain and unquestionable fact.

70. According to eyewitness accounts, Russian publications contain the names of individuals and details regarding payments granted to Russian soldiers and officers for their recruitment as mercenaries; they also contain information regarding persons captured for having violated Azerbaijani sovereignty, who admitted their guilt in the judicial investigation and testified that the Armenians were making much use of mercenaries. These persons (at least 11 in number) were sentenced to 15 years in prison; subsequently, in response to the appeals of the President of the Russian Federation, they were handed over to the state agencies of the Russian Federation.

71. The communication refers to the presence of mercenaries of various foreign nationalities employed by Armenia to attack Azerbaijan, and notes the need for the international community to coordinate measures to impose severe sanctions on States that resort to the use of mercenaries. Given its tenor, the Special Rapporteur feels it necessary to transcribe the communication verbatim

> "The Ministry of Foreign Affairs of the Azerbaijani Republic has considered the questions raised in his letter and prepared information on the subject, which we have the honour to submit for your consideration.
>
> "There is no doubt that problems connected with the use of mercenaries are of urgent and exceptional importance for Azerbaijan. For over six years the neighbouring State of the Republic of Armenia has been pursuing an aggressive policy of occupation against the Azerbaijani Republic, making extensive use of mercenaries directly recruited, financed and trained by the Armenian Government with the aid of the Armenian diaspora abroad.
>
> "The armed forces of the Republic of Armenia have occupied about 20 per cent of the territory of Azerbaijan, over a million people have been obliged to leave their homes as a result of the forcible deportation of Azerbaijanis from Armenia and the occupation of part of Azerbaijani lands,

thousands of peaceful citizens have perished and are still doing so, mainly the most vulnerable groups of the population - old people, women and children - and there are over 3,000 hostages in the hands of the Armenian soldiery.

"In committing their crimes against my country, the armed forces of the Republic of Armenia are making active use of bands of mercenaries to undermine the sovereignty, territorial integrity and political independence of the Azerbaijani Republic, which threatens and impedes full exercise of the right of self-determination by the people of Azerbaijan.

"The facts presented by the Ministry of Defence, the Ministry of National Security, the Ministry of Internal Affairs and the Supreme Court of the Azerbaijani Republic, which we consider it necessary to bring to your attention, leave no doubt about the fact that the Republic of Armenia is using mercenaries in the war against Azerbaijan in order to seize part of its ancestral lands by force.

"For instance, the tragedy of the Azerbaijani town of Khojaly will forever be a black in my country's history. The town was seized on 25-26 February 1992 by Armenian troops with the support and direct participation of units of mercenaries from the 366th motorized infantry regiment of the army of the former Union of Soviet Socialist Republics (USSR), which was stationed at that time in Hankendi. The town's inhabitants were crushed by infantry combat vehicles and armoured troop carriers. Old people, women and children were shot at point-blank range, prisoners were scalped, had their nails pulled out, their eyes put out, their ears cut off. These people's only fault was the fact that they were Azerbaijanis. According to the testimony of Y. Numanov, S. Tangirov and S. Ezizov, soldiers who ran away from the regiment's quarters before the attack on Khojaly, for each shell fired at the Azerbaijani town of Shusha soldiers in the regiment got 20 litres of alcohol from the Armenians, and for a night sortie by one infantry combat vehicle against a 'military' target the commander was paid a thousand roubles.

"According to the accounts of these same soldiers, who were in Khojaly after they fled from the regiment, they saw with their own eyes peaceful citizens being annihilated by members of the regiment and Armenian fighters. Whole families were killed, parents in front of their children, all shot at point-blank range. During the night and on the following morning, they finished off the wounded and shot prisoners. They subjected people to the most insulting mockery and pursued them robbing them and looting their possessions. According to the testimony of Jamil Mamedov, an inhabitant of Khojaly, who was a prisoner of the Armenians, tanks and armoured troop carriers entered the town, destroyed the houses and crushed the people. Behind the mercenaries from the troops belonging to the 366th motorized rifle brigade of the former USSR army came Armenian fighters. While a prisoner, he was beaten by foreign mercenaries, among whom J. Mamedov says he saw some with dark skins.

"As a result of the ever more frequent instances of the recent use of mercenaries by the parties involved in armed conflicts on the territory of

the former USSR, more attention is being paid to this phenomenon in the press. Thus an article entitled 'Soldiers of fortune from Russia' in the magazine Russky poryadok tells of the recruitment and use of mercenaries by the Armenians:

> 'Cases of the use of Russian soldiers and officers in settling national questions in sensitive areas of the former USSR are no longer any secret. Reports filter into the media about the recruitment of mercenaries from Russia to fight in the area of the Georgian-Abkhazian, Armenian-Azerbaijani and other regional conflicts ... Igor Chernenko, 25, tells how Armenian recruiters in Novosibirsk offered him US$ 5,000 a month to take part in the Karabakh war. After getting an advance of $100, Igor was flown by a private airline from Krasnodar Territory to Armenia, from where he was sent off with some lads from other parts of Russia to the war zone. According to Chernenko, he and the other Russian soldiers were used by the Armenian field commanders as "cannon fodder", being sent off on the most risky operations. After a month, Igor and two other Russian mercenaries asked to be paid the money they had earned and sent back to Russia, which was in accordance with the terms of their contract. During the night all three were disarmed by the Armenians, taken to the Agdam district of Azerbaijan, where Igor and his two fellow countrymen were made to put on Azerbaijani army uniforms, photographed several times and then shot outright. With two bullets in the thorax, Igor miraculously survived and was picked up by members of the Azerbaijani OMON and sent to a military hospital.'

"The most notorious incident was the case of the six citizens of the Russian Federation serving with the Seventh Army of the Russian armed forces, stationed in the territory of the Republic of Armenia, who, while taking part in military operations against the Azerbaijani Republic, were captured and put on trial for their crimes.

"According to the indictment in the criminal proceedings against K. V. Tukish, M. S. Lisovoy, A. A. Filippov, V. P. Kudinov and Y. L. Evstigneev, soldiers from a task-force company belonging to military unit No. 39826 of the Russian Seventh Army stationed in Yerevan, capital of Armenia, they first of all violated the State frontier of the Azerbaijani Republic and then penetrated into the mountain area of Karabakh. After spending the period from early June to early September 1992 at a centre for saboteurs in the village of Ballydzha on Azerbaijani territory, they prepared and carried out operations against the sovereign Azerbaijani Republic on the side of the Armenian armed forces.

"They had been recruited in Yerevan by members of the Armenian armed forces who had previously served with the 366th motorized infantry regiment of the army of the former USSR, whose 'activities' have been mentioned above. To get them to take part in military operations on Azerbaijani territory, they were promised large sums of money, substantially greater than their pay as members of the Russian armed forces.

"Already by 15 June 1992, Tukish, Kudinov, Lisovoy, Evstigneev, Filippov, Dorienko and Mrachkov were taking part together with Armenian army units in the fighting around the village of Syrkhavend in the Agderin district of the Azerbaijani Republic. The mercenaries destroyed three T-72 tanks and one BMP-2 infantry combat vehicle belonging to the Azerbaijani national army, killing their crews, together with several dozen Azerbaijani soldiers.

"The attackers also suffered losses. Two mercenaries, Dyachikhin and Dorienko, were killed in the fighting.

"When this operation was over, a mercenary lieutenant-colonel named 'Zhenya' in the town of Hankendi gave each of them 5,000 roubles, while Tukish and Filippov both got 3,000 roubles extra. In addition, at the Armenian Ministry of Defence in Yerevan they were given 25,000 roubles for the funerals of their two comrades who had been killed and 44,000 for the six survivors. After this, a group of 11 mercenaries were given the task of carrying out reconnaissance and blowing up a bridge in Azerbaijani territory. During this operation the saboteurs lost five men and the remaining six were taken by members of the military police of the Azerbaijani National Army.

"During the judicial investigation and the trial, the accused, who fully admitted their guilt, testified that the Armenians made extensive use of mercenaries, who were entrusted with the most highly specialized military functions in carrying out sabotage against the sovereign Azerbaijani Republic.

"On 12 May 1993, the military bench of the Supreme Court of the Azerbaijani Republic sentenced K. V. Tukish, A. A. Filippov, Y. L. Evstigneev and M. S. Lisovoy to death and V. N. Semion to 15 years' imprisonment.

"The sentences were not, however, carried out. In the light of an appeal by Mr. B. N. Yeltsin, President of the Russian Federation, and Mr. R. I. Khasbulatov, President of the Supreme Council of the Russian Federation, to the heads of the highest State organs of Azerbaijan and their assurances that all necessary measures would be taken to prevent further participation by Russian citizens in mercenary detachments involved in military operations against the Azerbaijani Republic, and in order to promote the further development of good-neighbourly relations and general ties between the Azerbaijani Republic and the Russian Federation, and being guided also by the higher interests of the Azerbaijani State and humanitarian principles, the National Assembly (Parliament) of the Azerbaijani Republic decided on 3 September 1993 to hand over the six former members of the Russian army and citizens of the Russian Federation to the State organs of the Russian Federation.

"The fact that citizens of the Russian Federation are participating as mercenaries in military operations against Azerbaijan on the side of the Armenian armed forces is also confirmed in many statements by Armenian prisoners of war.

"According to one of them, Armen Avetisovich Torosyan, on 30 August 1993, while moving through the town of Fizuli in Azerbaijan, he saw three 'Ural' vehicles each carrying 30 Russian soldiers.

"According to another prisoner, Arshavir Beibutovich Garayan, interrogated on 26 May 1993, there were 45 officers engaged in training personnel at the General Military Training Centre, of whom 25 were Russian nationals.

"According to Private Levon Sergeevich Dadayan, who was taken prisoner in 1993, each unit in Syrkhavend had 5 to 10 fighters from Armenia attached to it, among whom there were Russian mercenaries.

"The participation of foreign mercenaries in military operations against Azerbaijan has also been confirmed by the Armenian prisoners A. M. Egazaryan, D. G. Nazaryan, A. V. Gasparyan, R. R. Grigoryan and S. T. Gevorkyan.

"On 5 January 1994, during fighting in the Beilagan district of Azerbaijan, Vasily Vladimirovich Lugovoy, a citizen of the Russian Federation fighting on the side of the Armenian armed forces, was taken prisoner. In his statements to the investigating agencies and in a press interview, he said that in November 1993 a group of 30 mercenaries were transported by bus from Yerevan to Hankendi to take part in military operations against Azerbaijan. He also stated that battalions of Russian mercenaries were stationed in the occupied territories of Azerbaijan, in Fizuli, Kubadly, Shusha and Hankendi, and that there were also snipers from Lithuania and Estonia.

"During fighting in the Geranboy district of Azerbaijan, a list was found from which it appeared that out of 78 persons receiving weapons 11 were of Russian nationality.

"In January 1994, during fighting in the Kelbajar district of Azerbaijan, a number of Russian officers belonging to military unit 11233 of the Russian Ministry of Defence were captured.

"According to a report in the Novaya ezhednevnaya gazeta of 11 June 1993:

> 'In addition, in the self-styled "NKR" three mixed companies of mercenaries are operating, who have come to Transcaucasia illegally from Syria, Jordan, Italy, France, Israel and a number of African countries.
>
> 'The mercenaries are recruited by representatives of the Armenian diaspora abroad. The daily pay for taking part in military operations, according to some sources, is 250 dollars. The mercenaries are distinguished by particular cruelty not just towards armed enemies but also towards the peaceful population, including women and children.'

"In the fighting for the village of Farrukh in the Agdam district of Azerbaijan in October 1992, the bodies of two women were discovered among the Armenian dead. Identity cards were found in their pockets. These showed them to be French citizens, who had been recruited through the Centre Georges Pompidou and were fighting as snipers on the side of the Armenians.

"In one of the battles for the Kelbajar district of Azerbaijan, two dark-skinned mercenaries were killed. They were presumably from south-east Asian countries and were fighting on the side of the Armenian forces.

"These and other facts provide clear evidence and indeed incontrovertible proof that the Republic of Armenia, in waging armed aggression against the Azerbaijani Republic, is using all possible ways and means to promote its expansionist policy, even if they are in direct conflict with the fundamental principles and rules of international law and human morality and are unanimously condemned by the world community.

"The facts given above show beyond argument the efforts being made by the Armenian Ministry of Defence and the all-powerful Armenian lobby abroad to recruit foreign mercenaries for armed aggression against the Azerbaijani Republic, in order to undermine its territorial integrity and political independence and impede full exercise of the right to self-determination by the people of Azerbaijan.

"The way to avoid the use of mercenaries seems to be to strengthen coordinated measures by the international community and to impose severe international sanctions on States conducting an aggressive policy designed to stir up bloody warfare and using military units of mercenaries to achieve their ends.

"The Azerbaijani Republic is not as yet party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries or any international treaties on the prohibition of mercenaries' activities and their use, but it fully shares the only possible view that mercenarism is an unacceptable phenomenon, which is prohibited by the legislation in force in Azerbaijan, under which the national army is formed exclusively from the armed forces of the Azerbaijani Republic.

"We hope that the facts we have put forward for your consideration on the matters raised in your letter with regard to the urgent and important problem of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of the peoples to self-determination will prove helpful and will be used in the preparation of the report to the United Nations General Assembly at its forty-ninth session and to the Commission on Human Rights at its fifty-first session."

72. The Special Rapporteur has sent a communication to the Government of Armenia, transmitting the letter received from the Minister for Foreign Affairs of Azerbaijan and requesting the necessary explanations. The reply, when it

comes, and any additional information that may be requested from the Government of Azerbaijan will provide a complete picture of this situation.

B. Other States

73. Paragraphs 78 to 98 of the report submitted by the Special Rapporteur to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/23) contain extensive information regarding the armed conflicts in Georgia, the Republic of Moldova and Tajikistan and the alleged involvement - which allegations have not been denied - of mercenaries of various nationalities. The report includes a detailed communication from the Russian Federation drawing attention to its concern about the mercenary problem and the initiatives taken in its domestic legislation, as well as the desire to conclude appropriate international agreements between Russia and neighbouring States. It also reproduces a communication from the Government of Ukraine, in which the latter expresses its serious concern at the use of mercenaries in the region and notes that, given the "openness" of frontiers between the member States of the Commonwealth of Independent States (CIS), situations arise where individuals and groups pass from one country to another without the knowledge of the authorities and participate in armed conflict as mercenaries.

74. All the information contained in this report remains valid, in that there continue to be internal tensions and tensions over where to establish the borders and what belongs to which State, despite some limited agreements recognizing the status quo and finding a modus vivendi and some cease-fire agreements. Some States, as in the case of Georgia, have seen the establishment of large-scale peace-keeping operations using forces of the Commonwealth of Independent States. On 4 April 1994, a cease-fire agreement was signed in Moscow bringing an end to 18 months of war and providing for the return of over 250,000 Georgian refugees expelled from Abkhazia. In other countries, Moldova among them, the status quo remains in regard to the self-proclaimed Trans-Dniester Republic and the presence of Cossacks who acted as mercenaries against the sovereignty and the people of Moldova.

75. In another instance of serious armed conflict, which is unfolding in Tajikistan, there are many reports of the presence of foreign mercenaries. The Special Rapporteur wrote to the Government of Tajikistan concerning these reports, on 29 July 1993, and again on 2 December 1993, but has yet to receive a detailed reply on the matter. In any case, it is important to recall the adoption, in April 1994, of a timetable for the negotiations on national reconciliation, under United Nations auspices and in the presence of observers from Afghanistan, Kazakhstan, Kyrgyzstan, the Islamic Republic of Iran, Pakistan, the Russian Federation and the Conference on Security and Cooperation in Europe.

76. The second round of negotiations, held in Teheran from 18 to 28 June 1994, reached a definition of the concept of cease-fire and cessation of hostilities that should settle questions such as: cessation of military activities, including violations of the Tajik-Afghan border, offensive operations within the country, the shelling of adjacent territories, military training, the redeployment of regular and irregular military formations in Tajikistan and

Afghanistan, emplacement of troops from the Russian Federation and the Collective Peace-keeping Forces of the Commonwealth of Independent States (CIS), the cessation of acts of terrorism, blockades of cities, attacks on military and industrial installations and the means of communication; the cessation of the use of the communications media to attack or undermine the process of national reconciliation, and the prevention of the use of religion and the religious feelings of believers. The negotiations, which have been extended until 1 October, will include other aspects such as the release of prisoners, the halting of trials resulting from the conflict and the lifting of the ban on activities of political parties and the press. Clearly, in this context, the question of mercenaries will also be resolved, as it can be considered under the item concerning irregular military formations. To date, the civil conflict in Tajikistan has claimed more than 20,000 lives and 500,000 persons have become refugees.

77. The Special Rapporteur has begun the follow-up of the questions raised concerning Crimea, where positions taken in reaffirmation of national and territorial rights could result in another conflict. The involvement of groups of various nationalities could cause persons and groups to turn to mercenaries if an armed conflict were to break out; this must be avoided. Rather, the path of negotiation and political understanding must be followed to the end. Despite all the reservations that one might have concerning some of the internal actors, the examples of Georgia and Tajikistan demonstrate that negotiation and national reconciliation are possible.

VII. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

78. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in resolution 44/34 of 4 December 1989, is to enter into force on the thirtieth day following the date of deposit of the 22nd instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 19, paragraph 1. The Special Rapporteur is compelled to draw attention to the slow pace of the process of expressing consent to be bound by the International Convention through ratification or accession, since up to now only seven States have completed this process: Barbados, which acceded to it on 10 July 1992; Cyprus, which deposited its instrument of accession on 8 July 1993; Maldives, which signed the Convention on 17 July 1990 and ratified it on 11 September 1991; Seychelles, which acceded to it on 12 March 1990; Suriname, which signed it on 27 February 1990 and ratified it on 10 August 1990; Togo, which deposited its instrument of accession on 25 February 1991; and Ukraine, which signed it on 21 September 1990 and ratified it on 13 September 1993.

79. It should also be noted that a further 13 States have signed the International Convention: Angola (28 December 1990), Belarus (13 December 1990), Cameroon (21 December 1990), Congo (20 June 1990), Germany (20 December 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990) and Zaire (20 March 1990).

VIII. CONCLUSIONS

80. The United Nations considers mercenary activities unlawful and criminal, as mercenaries have been used to commit acts contrary to international law, thereby creating situations that impede self-determination and endanger the sovereignty of States, the constitutional stability of Governments and the human rights of the peoples affected by this criminal activity. In this context, international instruments have been adopted which condemn and punish the recruitment, training, financing and use of mercenaries. At the same time, according to information gathered for this report, many States have included mercenarism as a punishable offence in their national legislation.

81. The condemnation of mercenarism is a universally accepted fact, even in those States which have not yet specifically categorized it as a crime. At this point, the debate is focused on the scope and content of this punishable act, but not on its criminal nature. Moreover, without prejudice to the further development of international legal instruments and of the provisions of national law, member States should strengthen their capacity to formulate policies on the prevention, prosecution and punishment of mercenary activities. The prevention aspect is fundamental and must include such matters as, for example, use of the open labour market in recruiting persons for unspecified activities. This topic is extremely sensitive and should be examined by each country in accordance with the nature of its economic system as protected by the Constitution. In any case, it cannot be alleged that there is any contradiction between constitutional and international norms. If mercenary activities are considered a crime, it cannot be argued that it is permissible to use the open market to recruit mercenaries.

82. In the same way, States have the capacity to prevent their territory from being used for the training, massing or transit of mercenaries. States can also take very useful action by adopting measures to ensure that their financial and economic systems cannot be used to facilitate operations linked to such illicit activities.

83. From the information gathered, classified and analysed for this report, it is clear that mercenary activity is not limited to the agent who actually commits the criminal act. He is merely the one who executes a wrongful act. In reality, before a mercenary is recruited and before he commits a wrongful act, there has to be an operation which has been conceived, planned, organized, financed and supervised by third parties; the latter may be private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, paramilitary groups or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action. Responsibility for a mercenary act extends to the agent who executes the criminal act in its final phase, but also to all those who, individually or collectively, participated in the wrongful act of using mercenaries for the commission of a crime. This, therefore, leads to the conclusion that vigilance, control and express prohibition provided for by Member States in their domestic legislation are very important in order to prevent organizations which generate mercenary activities from operating in their territory and, where necessary, to counter any intelligence machinery

that, through covert operations, permits the involvement of government agents who recruit mercenaries or do so through third organizations, by prescribing harsh punishment for such unlawful contractual relationships.

84. In addition to the general observations made above, mercenaries are most frequently recruited to commit acts of sabotage against a third country, to carry out selective assassinations of eminent persons, and to participate in armed conflicts. It therefore follows that a mercenary is a criminal who, without prejudice to the punishment applicable to those who recruited and paid him, must be severely punished, in keeping with the categorization of the common crime he has committed, where national law does not envisage the crime of mercenarism as such. In any case, the person's mercenary role should be considered as an aggravating factor.

85. Based on the information gathered on mercenaries participating in the most recent domestic or international armed conflicts, it is necessary to consider the possibility that the increase in the supply of mercenaries might be influenced by the existence of military personnel whose personal situation has deteriorated as a result of the reduction in strength or dissolution of the regular armed forces to which they belonged, and who have consequently joined the ranks of the unpaid.

86. There are cases in which legal formulas, or more specifically, standard legal procedures are resorted to in order to conceal a mercenary. He may thus appear to have the legal status of a national of the country where he becomes involved in an armed conflict, or where he will fulfil his criminal assignment, thereby avoiding categorization as a mercenary. Although this approach legally masks an individual's real mercenary role, the origin of the contractual relationship, the payment received, the type of services agreed on, the simultaneous use of other nationalities and passports, etc., must be seen as indications of the true nationality of persons where there are strong grounds for suspecting that they are mercenaries.

87. The sum total of these acts defines the scope and magnitude of mercenary activity as one of the crimes that most seriously harm the self-determination of peoples, constitutional stability, peace and human rights. This therefore highlights the importance of the General Assembly's agreement, as reflected in resolution 48/92 adopted on 20 December 1993 (para. 9), concerning the convening of a group of experts, specialists and interested persons who could contribute to the further development of the concepts, categories, studies and proposed solutions contained in the reports which the Special Rapporteur has submitted to the Commission on Human Rights and the General Assembly itself. The fact that, due to budget restrictions, the Centre for Human Rights did not programme this activity for 1994 does not mean that it cannot be maintained, since it can indeed help to contribute to the development and production of practical recommendations for the proposals contained in the reports of the Special Rapporteur.

88. The information gathered confirms that during the past few years, several African States have been subjected to the activities of mercenaries. In this connection, it should be recalled that the concept of a mercenary, as construed today, took as its point of departure the presence of professionals of war, who

were active in bloody armed conflicts in various regions of Africa in order to prevent the exercise of the right to self-determination, independence and the formation of sovereign African States, and to form territorial enclaves subordinate to former colonial Powers or to install Governments subordinate to them or to colonialist ventures. In so far as some of these conflicts have been settled, mercenary activities can be said to have subsided, but they have not disappeared completely. Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Zaire, Zambia and Zimbabwe, inter alia, are countries with recent experience of mercenary activity, and in certain cases, outside the region of southern Africa, mercenary attacks have occurred as a result of the policy of apartheid which originated in South Africa but has ramifications and has sparked criminal activities all over Africa and even outside it.

89. During the first half of 1994, the situation in Angola continued to deteriorate, with the failure of the attempts to continue the process begun by the peace agreements signed on 31 May 1991. The information obtained indicates that the impact of this war on the Angolan people is even worse than it had been up until 1991. Their living conditions have deteriorated to such an extent that starvation is widespread, the number of deaths is estimated at over 1,000 a day and at approximately 200,000 since the resumption of the war. United Nations efforts to reduce the suffering of the Angolan people and to end the conflict have not been successful thus far. Hence the importance of Security Council resolution 864 (1993), unanimously adopted on 15 September 1993 pursuant to Chapter VII of the Charter of the United Nations, declaring an embargo on the supply of arms, related matériel and petroleum to UNITA forces. None the less, it should be noted that in early December 1993 UNITA announced its willingness to negotiate a truce and reopen a dialogue with the Government. Unfortunately, the talks failed and the military conflict once again intensified. In June and July 1994 both parties to the conflict launched offensives, securing the areas under their control and attacking those controlled by the other side. The war threatens to continue indefinitely, postponing the prospect of a negotiated peace.

90. In relation to the mercenary activities generated in South Africa within the context of the policy of apartheid, whose backdrop has been not only South Africa, but also other countries of the region, and even countries outside Africa, the report demonstrates that such mercenary activities have substantially abated with the progressive dismantling of apartheid. The holding of the first multiracial and democratic elections, in April this year, and resulting election of Nelson Mandela as President, signals the beginning of a process of consolidation of democracy and full respect for human rights in South Africa. As this process continues, it is to be hoped that the resistance of certain extremist groups within the white minority, which have even called for the hiring of mercenaries to assist them with military organization and training, will be kept under control, and that it will be possible to investigate and punish the actions of those civil servants, State agents, civil or military officials, mercenaries and paramilitary personnel who have committed crimes against the black population in South Africa and neighbouring countries.

91. The report reviews and enlarges on the concerns of the Special Rapporteur on the situation of human rights in Rwanda, already referred to in his reports of 1992 and 1993. In the context of the serious deterioration of the situation

in that country, which has led to the deaths of more than 500,000 people and suffering for the entire population, the report places particular emphasis on the need for a thorough investigation of the criminal attack on the aircraft carrying the Presidents of Rwanda and Burundi, in which both were killed. Although it would be premature to draw any conclusion, it is not possible to ignore the accusations, comments and rumours that have been echoed in the international press regarding the possibility that two foreign mercenaries may have been the principal figures responsible for the attack, which unleashed the genocidal massacres.

92. Unlike previous reports, this text contains no additional information on the armed conflicts in the territory of the former Yugoslavia. Instead, it emphasizes the correspondence and allegations received from the Federal Republic of Yugoslavia (Serbia and Montenegro) and from the Republic of Croatia, on the presence of mercenaries. The Special Rapporteur plans to visit both countries in the second half of September this year, and will give a preliminary account of the results of his mission when he introduces the report in the Third Committee of the General Assembly. This does not preclude a more detailed analysis in subsequent written reports.

93. Following the breakup of the former Union of Soviet Socialist Republics, the republics which previously formed part of that State have become sovereign and independent States, the majority of them making up the Commonwealth of Independent States (CIS). Disputes of various sorts have arisen in a number of those countries, some relating to border issues, others to internal relations between territories and republics and their autonomy with respect to the new State. But the disputes which have degenerated into armed conflict are mainly those which involve some ethnic element and strong nationalist or religious feeling, acting as catalysts in the choice between greater autonomy, territorial redistribution involving a move from one State to another or a change in the nature of the political regime. In every case where the deadlock has turned into armed conflict, there has been participation by mercenaries, according to the information analysed by the Special Rapporteur. The report refers especially to the Nagorny Karabakh conflict, in which the main adversaries are the armed forces of Azerbaijan and the ethnic Armenians of Nagorny Karabakh, fighting for control of the enclave. It is well known that there have been numerous accusations concerning the participation of mercenaries in this conflict. A detailed account of their activities in association with the ethnic Armenian forces is contained in a recent communication from the Government of Azerbaijan. Peace efforts have so far been unsuccessful. On the other hand, solutions have been found for the conflicts in Georgia and the Republic of Moldova, and a peace process has begun in Tajikistan; in all of these conflicts, there had been numerous accusations concerning the presence of mercenaries. This shows that political negotiation can lead to realistic agreements, guaranteeing peace and good relations among all the States making up the Commonwealth of Independent States.

94. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur notes that to date only seven States have completed the process for becoming parties to the Convention (Barbados, Cyprus, Maldives, Seychelles, Suriname, Togo and Ukraine), and that a further 13 States have signed it. This

situation has prompted the conclusion that there is a delay in the process by which Member States express consent to be bound by the Convention through ratification or accession, for until 22 States have ratified or acceded to it, the Convention cannot enter into force.

IX. RECOMMENDATIONS

95. Noting that mercenary activities have not subsided thereby resulting in situations that violate human rights and impede the exercise of the right of peoples to self-determination, and taking into account the United Nations declarations and resolutions condemning such activities as serious crimes which give all States cause for profound concern, the Special Rapporteur recommends to the General Assembly that it should reaffirm its condemnation of mercenary activities of any type or form and at any level, and of States or third parties involved in them. He further stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the self-determination of peoples, full respect for and enjoyment of human rights and the stability of constitutionally established and lawfully functioning Governments.

96. Bearing in mind that mercenary action takes place chiefly, but not exclusively, in the context of armed conflict, as mercenary operations have also been staged where there was no armed conflict, it is recommended that the General Assembly should stress that the use of mercenaries in itself and their use for unlawful activities are to be condemned, both in cases where such activities are carried out by one or all parties to an armed conflict and in cases where there is no armed conflict, and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life and safety of its inhabitants.

97. Bearing in mind the nature, forms, contractual relationships and specific characteristics involved in mercenary activities, the Special Rapporteur suggests that the resolution condemning such activities should include a recommendation that Member States should establish, in their domestic legislation, an explicit prohibition in order to prevent organizations linked to mercenaries from operating in their territory and from engaging in any contractual activity relating to mercenaries or any propaganda and public promotion activity on behalf of paramilitary groups and mercenaries. States should also prohibit their public authorities from resorting to mercenarism, and counter any intelligence machinery which through covert operations uses mercenaries or does so through third organizations.

98. Given the oversupply of career military personnel who are connected with the market for mercenary services, and the use of legal devices and legal procedures to disguise the mercenary's legal status and nationality, or cases of simultaneous dual or multiple nationality, it is recommended that the General Assembly should reiterate the agreement reflected in resolution 48/92 of 20 December 1993, in the section referring to a meeting of a group of experts, specialists and interested persons, so that, together with the Special Rapporteur, they may put forward proposed solutions aimed at significantly reducing the problem.

99. Africa is still the continent most affected by mercenary activities, which persist in certain conflicts in the region and continue to pose a latent threat to other African countries. It is therefore recommended that the General Assembly should reaffirm its strong condemnation of the presence of mercenaries and of those States and third parties which promote mercenary activities in Africa, and its unqualified support for the self-determination and development of the African peoples, and the full enjoyment of their human rights. It should also express its support for the measures taken, in accordance with international and domestic law, in the case of countries affected by the presence of mercenaries.

100. Further to the previous recommendation, and bearing in mind that the elimination of the apartheid regime in South Africa and the installation of a democratic and non-racial regime in that country may favour the reduction of mercenary activities, it is recommended that support should be given to the measures to expel from African countries all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences. Nationals who have participated in mercenary activities should also be liable to provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism.

101. Taking into account the continuation of the armed conflict in Angola in the first half of 1994, it is recommended that the General Assembly should draw attention to the grave prejudice that the prolongation of the conflict represents for the Angolan people and for the respect and enjoyment of their human rights. At the same time, it should stress the need to put an end to the conflict, within the framework of the peace agreements and initiatives contained in the relevant United Nations and OAU resolutions. The recommendation should also mention the need for strong condemnation of the presence of mercenaries who have become involved in the armed conflict in Angolan territory or from neighbouring countries.

102. Bearing in mind that the apartheid regime in South Africa has been dismantled and that democratic and non-racial elections, in which 27 million South Africans participated for the first time, have been held in that country, it is recommended that the General Assembly should once more express its support for the democratization process in South Africa. In this context, the presence in that country of mercenaries who were acting under the protection of, and in support of, the apartheid regime must not be allowed to continue. The resolution should also condemn the acts of armed violence favoured by Afrikaner minority resistance groups, and encourage the investigation and punishment of crimes and human rights violations committed in support of apartheid; such crimes should not remain unpunished.

103. Bearing in mind the grave situation existing in Rwanda and the genocidal massacres which have caused hundreds of thousands of casualties among that country's inhabitants, it is recommended that in addition to the efforts for peace, humanitarian aid, cooperation and assistance in the reconstruction of Rwanda, consideration should be given to the desirability of a formula which, by strengthening the powers of the Commission of Experts appointed by the Secretary-General, and through the machinery of the United Nations system's

specialized human rights bodies, would permit a thorough investigation of the crimes committed in Rwanda, and especially of the terrorist attack of 6 April 1994 on the aircraft carrying the Presidents of Rwanda, Mr. Juvenal Habyarimana, and of Burundi, Mr. Cyprien Ntyamira, who were both killed in the attack. That incident touched off the massacres in which hundreds of thousands of Rwandans died. As the report states, the possibility that two foreign mercenaries were involved in carrying out the attack must be thoroughly investigated.

104. Concerning the armed conflicts which have broken out in some of the States members of the former Union of Soviet Socialist Republics, including those in Nagorny Karabakh and Tajikistan which are still continuing, and in addition to the initiatives for peace in this vast region, it is recommended that the General Assembly should expressly condemn the use of mercenaries by any of the parties to the armed conflicts which are still continuing and in those which are over or partially over. The recommendation should also contain an appeal to all States of the region to characterize mercenary activity as an offence in their criminal legislation, and to impose penalties on anyone who has been acting as a mercenary either individually or by forming an irregular paramilitary group.

105. Lastly, with regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that it should be suggested to those States which have not yet ratified it or signalled their intention to accede to it that they consider the advisability of speeding up this process, which would contribute to more effective action by the international community for the prevention, prosecution and punishment of mercenary activities, and contribute to the observance of the purposes and principles contained in the Charter of the United Nations.